

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

**UNITED STATES OF AMERICA**

\*

**V.**

\*

**Cr. No. GLR-19-503**

**RICHARD WHITE**

\*

**Defendant**

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**For: RICHARD WHITE**

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**MEMORANDUM IN AID OF SENTENCING**

RICHARD WHITE, by his undersigned counsel, hereby files this memorandum in aid of sentencing, anticipated for October 6, 2021, and states :

**FACTS**

As outlined in the Statement of Facts attendant to the plea agreement, on May 20, 2019, Mr. White was arrested and the rental car he was driving was seized. Three days later, that car was searched. A gun was found in the console of the car and in the backseat in a closed black bag were found several narcotics items. Specifically, the bag contained five items of small amounts of narcotics, listed here by their drug weight and, for guidelines purposes, their marijuana equivalent: 31 gel caps of heroin (14 grams; 14 kilograms); 22 vials of heroin and cocaine (15 grams; 15 kilograms); 1 bag of cocaine (3.6 grams; .7 kilograms); 27 vials of cocaine (20.5 grams; 4 kilograms) and 5 other vials of heroin and cocaine (4.5 grams; 4.5 kilograms). Total equivalent drug weight is 38.2 kilograms of marijuana, putting the drugs at offense level 16.

Unlike many other drug cases before this Court, there is no evidence that Mr. White sold drugs at any time in this matter - no other seizure, no surveillance of him allegedly selling narcotics, no sales to undercover officers, no wiretap with him discussing drugs.

He is not charged with conspiracy and other than amount and packaging of the items in the bag in the backseat, there is no evidence suggesting distribution by Mr. White.

### **GUIDELINES ANALYSIS**

Mr. White agrees that technical application of the career offender under USSG sec. 4B1.1(a), he qualifies as a career offender and that under USSG sec. 4B1.1(b)(C), his offense level for the drug offense jumps to 32 and his criminal history category automatically increases to CHC VI. Adding a level under USSG sec. 3D1.4(b), his final base level would be 33. With a three level reduction for his guilty plea, his career offender guidelines would be 168 to 210 months. The defendant contends that such a range is unreasonable in this case, given the facts of the instant offense and the ages of the defendant's qualifying offenses.

A far more appropriate range is determined by the actual facts of this case and White's prior record. As to the latter, his actual criminal history puts him in CHC IV. And the facts of the case put him at a base offense level of 25 (level 24 for the gun charge under USSG sec. 2K2.1(a)(2) plus one level combining the drug charge at level 16) and, with a three level reduction for his plea, his guideline range is 63 to 78 months. The proposed agreed sentence of 60 months is slightly below this range. Given that Mr. White admits ownership of the narcotics in a case in which there is no evidence of him selling drugs, a sentence slightly below the guideline range is reasonable.

In addition, application of the career offender guidelines here would be draconian in light of the ages of Mr. White's qualifying convictions. His two prior offenses that meet the career offender definition are a robbery committed sixteen years ago and a possession with intent to distribute offense nearly as old. In fact, the offenses occurred

about 3 1/2 months apart during the period of October 16, 2005 to January 31, 2006. Sentencing a defendant as a “career offender” for offenses committed at age 18 four months apart greatly overstates his actual criminal history and results in a sentence well beyond what is necessary.<sup>1</sup>

### **ADDITIONAL SENTENCING CONSIDERATIONS**

At a contested sentencing, the Court would also be asked to consider both the length and severity of Mr. White’s pretrial incarceration. White was arrested by Baltimore City on June 5, 2019. He was detained in that matter in Baltimore City until November 5, 2019, when he was brought to federal custody. ECF 6. He was detained, ECF 14, and has been in custody since at the DC jail since. He has been held in pretrial detention for 28 months.

In addition to the unusual length of his pretrial custody, that detention has covered the entire period of the COVID-19 pandemic. As the Court is aware, that pandemic created serious health dangers to all inmates, and the DC jail was particularly dangerous. In fact, the precautions at the DC jails were so lax that the inmates sued the jail for relief. *Banks, et al. v. Booth, et al.*, CKK-20-849. Judge Kathleen Kollar-Kotelly of the United States District Court for the District of Columbia stated that “Based on the current record, Plaintiffs have provided evidence that Defendants are aware of the risks that COVID-19 poses to Plaintiffs’ health and have disregarded those risks by failing to take comprehensive, timely, and proper steps to stem the spread of the virus.” *Id.*, ECF 100, at 24. Indeed, the Court found that conditions at the DC jails were so bad that “on the

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<sup>1</sup> Similarly, his lone other felony conviction is for a handgun possession that occurred over 10 years ago.

current record, the Court finds that Plaintiffs have established a likelihood of success in showing deliberate indifference.” *Id.*

Based on the facts of this case, the ages of his convictions, as well as his age at the time of those convictions, the length and danger of his pretrial incarceration and the potentially dispositive legal matters, the parties agree that a sentence of 60 months incarceration is fair and appropriate. The defendant respectfully asks the Court to consider agreeing with the parties’ position.

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 4<sup>th</sup> of October, 2021, a copy of the foregoing Motion was served electronically by ECF to: Office of the United States Attorney, 36 South Charles Street, Fourth Floor, Baltimore, Maryland 21201.

\_\_\_\_\_/s/\_\_\_\_\_  
Richard Bardos